

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

JOHN F. O'MARA

Chairman

EUGENE W. ZELTMANN

Deputy Chairman

THOMAS J. DUNLEAVY

MAUREEN O. HELMER



LAWRENCE G. MALONE

General Counsel

JOHN C. CRARY

Secretary

DOCKET FILE COPY ORIGINAL

September 24, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RECEIVED
SEP 25 1997
FCC MAIL ROOM

Re: CS Docket No. 95-184; Telecommunications Services Inside
Wiring - Customer Premises Equipment and MM Docket No.
92-260: Implementation of the Cable Television Consumer
Protection and Competition Act of 1992 - Cable Home Wiring

Dear Secretary Caton:

Enclosed for filing please find an original and nine copies
of the comments of the New York State Department of Public
Service in the above-captioned matter.

A copy of the comments is being provided to the
Commission's document contractor, ITS.

Thank you.

Sincerely,

Lawrence G. Malone

General Counsel

New York State

Department of Public Service

3 Empire State Plaza

Albany, NY 12223

Encs.

No. of Copies rec'd
List #005

0+9

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of the Cable Television)
Consumer Protection and Competition)
Act of 1992)

Cable Home Wiring)

and)

In the Matter of)

Telecommunications Services)
Inside Wiring)

Customer Premises Equipment)

MM Docket No. 92-260

RECEIVED
SEP 25 1997
FCC MAIL ROOM

CS Docket No. 95-184

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

Dated: September 24, 1997
Albany, NY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of the Cable Television)	MM Docket No. 92-260
Consumer Protection and Competition)	
Act of 1992)	
)	
Cable Home Wiring)	
)	
and)	
)	
In the Matter of)	
)	
Telecommunications Services)	CS Docket No. 95-184
Inside Wiring)	
)	
Customer Premises Equipment)	

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

The New York State Department of Public Service (NYSDPS) submits these comments in response to the Further Notice of Proposed Rulemaking (Notice) released August 28, 1997. In the Notice, the Commission proposes modifications to its cable home wiring rules including a procedural framework for the disposition of cable home wiring and home-run wiring in multiple dwelling unit buildings (MDUs). The Commission solicits comments on various aspects of the proposed rules. These comments address the issue of the applicability of the proposed rules.

The proposed rules are designed to cover the rights of interested parties only upon termination of service either by an individual tenant acting in his or her own behalf or by a MDU owner acting on behalf of all tenants. They include proposed mechanisms for the removal or sale of home wiring and home-run

wiring in MDU buildings and describe the circumstances under which such wiring shall be deemed abandoned. The Commission states explicitly in the Notice that the proposed procedural mechanisms "would not apply where the incumbent provider has a contractual, statutory or common law right to maintain its home-run wiring on the property." (Para. 34) The Commission also states that it is "not proposing to preempt an incumbent's ability to rely upon any rights it may have under state law" (Para. 34) and that the rules "do not grant MDU owners any additional rights." (Para. 47) In this context, the Commission invites comment on whether it can or should create any presumptions or other mechanisms regarding the relative rights of the parties if an incumbent's right is disputed.

New York State is among a group of states (estimated by the Commission at fewer than 20) which has a right-of-access statute. (Public Service Law, § 228) NYSDPS believes that the proposed rules should not apply to any entity that has installed facilities in a MDU building pursuant to a state right-of-access statute. We also believe that the Commission should not create any presumptions or mechanisms with respect to rights conferred under state statutes.

The scope and effect of state access statutes, which should be expected to vary from state to state, are matters for state regulators and state courts to resolve. The states are a preferable forum particularly where, as in New York, the right-of-access has been held to constitute a "taking" of property.

The extent of the taking authorized under state law as well as the compensation that may have been paid for it or to which a MDU owner may be entitled are both matters that are not conducive to administrative presumptions by the Commission.¹

For the foregoing reasons, NYSDPS urges the Commission to clarify that the proposed rules do not apply in states where facilities have been, or may be, installed pursuant to a state right-of-access statute.

Respectfully submitted,



Lawrence G. Malone
General Counsel
New York State
Department of Public Service
3 Empire State Plaza
Albany, NY 12223-1350

Of Counsel
John L. Grow

Dated: September 24, 1997
Albany, New York

¹ Moreover, we find that the proposed rules are potentially ambiguous with respect to the status of the rights of parties to "riser" cables and to hallway moldings. This aspect of the rules, coupled with serious questions about the Commission's authority to promulgate rules concerning wiring other than wiring within the tenant's premises, i.e., cable home wiring pursuant to 47 U.S.C. § 544(i), could well create more, rather than less, confusion, in right-of-access states.